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University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Published Monthly, November to June, by the University of Pennsylvania
Law School, at 236 Chestnut Street, Philadelphia, Pa., and
34th and Chestnut Streets, Philadelphia, Pa.

\$2.50 PER ANNUM; FOREIGN, \$3.00; SINGLE COPIES, 35 CENTS.

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NOTES.

CARRIERS—"ACT OF GOD"—IS NEGLIGENCE THE PROXIMATE CAUSE?—EFFECT OF CARMACK AMENDMENT—A recent decision¹ of the Supreme Judicial Court of Maine is of more than passing interest. For, although it lays down no new principle of law on this subject, yet by the application of another principle it achieves a result which, if followed, is bound to have a tremendous effect. Goods had been shipped over the defendant line, on a bill of lading which exempted the carrier from liability for loss caused by an Act of God. Through negligence they were delayed and so reached Dayton, Ohio, in time to be damaged in the flood of a few years past. Without more, this presents the question which of two well-

¹ Continental Paper Bag Co. v. Me. Cent. Ry. Co., 99 Atl. 259 (Me. 1916).

known views as to liability is to be followed. But this occurred since the Carmack Amendment,² and so it was necessary to consider at least a part of that—being an interstate shipment.³ Was the cause of the damage the Act of God, or the negligence of the carrier? If the latter, obviously it could not exempt itself and so would be liable.

That there are conflicting decisions on this point the court recognized. Could it make a free choice, or was there one view that it was bound to take? The court came to the conclusion that it was compelled to follow the ruling of the Federal courts on this question. For since there is a Federal statute covering the subject it is removed from the sphere of state action,⁴ and the prime object of the Carmack Amendment being to secure a uniform rule of responsibility as to interstate commerce,⁵ the law as administered in the Federal courts and affected by the Acts of Congress had to be followed.⁶ Accordingly it was held that the defendant was not liable. On the authority of this case then, hereafter when the shipment is interstate the rule laid down in *R. R. v. Reeves*⁷ must be followed. Is this result desirable?

One of the earliest cases in this country was *Morrison v. Davis*,⁸ which laid the foundation for the Federal rule. There the court was confronted with the task of deciding whether the carrier's negligence was the proximate cause, or the Act of God. The result is based largely on the test of foresight. Could the carrier have foreseen that the goods would be overwhelmed by such a casualty, as a result of its negligence? The answer is in the negative—and rightly so. The negligent act is then viewed as merely one of a series of antecedent events, necessary no doubt to enable the Act of

² Act of June 6, 1906, Chap. 3591, Sec. 7, pars. 11 & 12; U. S. Stat. at Large, p. 595.

³ The part applicable reads: "That any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss; damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed; Providing, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law."

⁴ *Nor. Pac. Ry. v. State of Wash.*, 222 U. S. 370 (1911).

⁵ *A. T. & S. F. Ry. v. Harold*, 241 U. S. 241 U. S. 371 (1916).

⁶ *Ga., Fla. & Ala. Ry. v. Blish Milling Co.*, 241 U. S. 190 (1916); *Cinn., etc., Ry. v. Rankin*, 241 *id.* 319 (1916).

⁷ 10 Wall. 176 (U. S. 1869), that the Act of God is the proximate cause; not the negligence.

⁸ 20 Pa. 171 (1852).

God to accomplish the given result, but not proximate in the eyes of the court.⁹ This line of reasoning has been widely followed, and at one time probably represented the weight of authority.¹⁰

But granting that this is a justifiable result from the test used, is that the correct test? Proximate cause may also be determined by the natural and probable sequence of events following the negligent act; and admittedly the exact damage need not be foreseen.¹¹ That it is the natural result, in the sense that it occurs in the ordinary course of nature, no one will deny; as to its probability there is more doubt. But in *Green-Wheeler Shoe Co. v. Chi., R. I. & P. Ry.*,¹² the court answered this doubt by a very logical reply. Its reasoning was that, though the carrier could not foresee that particular act, yet it could foresee that the time of its liability would be extended, and that accordingly the chance of accident was just so much more possible. On reasoning such as this, an accident being more possible if not probable, and the result being natural, the carrier was held liable. While in result this Iowa case accords with the cases opposed to the Federal view, yet the reasoning is different. The leading case in holding the carrier liable is still *Michaels v. N. Y. Cent. Ry.*¹³ According to a later case,¹⁴ the rationale of the New York rule (so-called) is, that a carrier is always liable unless it can prove the loss was caused by an Act of God, or the public enemy—or there is a specific contract exemption. To avail itself of such defense, it must show freedom from fault at the time. A technical construction of this would perhaps lead to a conclusion that the negligence was a bar to a certain defense, rather than a proximate cause in itself. Yet a consideration of the later cases, supposedly based on this one, show that the courts holding the carrier liable, do so on the ground that its negligence is the proximate cause.¹⁵ Indeed, it is probable that at the present time and aside from the effect of the Maine case, the majority rule is that holding the carrier liable.

Assuming that the Carmack Amendment makes this result necessary, is it a wise one? Text-writers—like the courts—are divided on this subject, some following the Federal view,¹⁶ while others

⁹ *St. Louis, etc., Ry. v. Commercial Ins. Co.*, 139 U. S. 223 (1890), applied to an exempted liability—a fire.

¹⁰ *Denny v. N. Y. Cent. Ry.*, 13 Gray 481 (Mass. 1859); *Daniels v. Ballantine*, 23 Ohio St. 532 (1872); *Hunt v. Mo., K. & T. Ry.*, 74 S. W. 64 (Tex. 1903).

¹¹ *Ill. Cent. Ry. v. Siler*, 229 Ill. 390 (1907); *Hill v. Winsor*, 118 Mass. 251 (1875); *McKee v. Harrisburg Traction Co.*, 211 Pa. 47 (1905).

¹² 130 Ia. 123 (1906).

¹³ 30 N. Y. 564 (1864).

¹⁴ *Bibb Broom Corn Co. v. A. T. & S. F. Ry.*, 94 Minn. 269 (1905).

¹⁵ *Wald v. Pittsburgh, etc., Ry.*, 162 Ill. 545 (1896); *Hernsheim v. Newport News & M. V. Co.*, 18 Ky. Law 227 (1896), a case of exempted liability; *Pruitt v. Hannibal & St. Jo. Ry.*, 62 Mo. 527 (1876).

¹⁶ 1 Thompson, Negligence, Sec. 74; Schouler, Bailments (Ed. 1905), Sec. 348; Hale, Bailments & Carriers, p. 361.

prefer and justify the New York view.¹⁷ On purely logical reasoning there is something to be said for both views—since they proceed on different theories in judging proximate cause. But from a standpoint of business expediency and protection of shippers, it seems that on the whole the New York view is preferable. Not that it cannot be carried to an extreme that would be burdensome to the carrier. But if administered wisely it is more just to the shipper and places the loss where it belongs. Under the Federal rule the carrier can delay the shipment and escape liability simply because the damage is conveniently done by an “Act of God.” The tendency of late has been against such a result—in fact, the court in the Maine case admits that the majority of jurisdictions are probably *contra* to the view it adopts. And it is unfortunate that this salutary holding should now be changed simply because a Federal Act is so worded as to be involved whenever the shipment is interstate. It is doubtful if Congress realized that this result would follow the Carmack Amendment; if it did and intended that the Federal rule should be enforced throughout the country, it is to be regretted, since so many courts of unquestioned standing have adopted the contrary and more advantageous view.

R. T. B.

CONSTITUTIONAL LAW—STATE TAX ON FOREIGN INSURANCE COMPANIES—“INTERSTATE COMMERCE”—“DOING BUSINESS”—The extent to which a state may tax a foreign corporation doing business within its borders has always been a subject of contention between the various states and the Federal Government; and while the numerous decisions of the Supreme Court upon the various phases of this problem have firmly established a number of fundamental rules, in many close cases there is still a substantial element of doubt as to what the decision will be. This doubt is due to the difficulty of applying well-established principles rather than to any uncertainty as to what principles are to be applied.

It is now settled, beyond peradventure of doubt, that no state is bound to recognize a foreign corporation *as such*; nor is any state bound to permit such a corporation, as such, to enter the state and transact business therein, except with such limitations and upon such conditions as the state may choose to impose.¹ This conclusion is possible because Article IV, Section 2 of the Constitution, which provides that, “The citizens of each state shall be entitled to all the privileges and immunities of the citizens in the several states,” does

¹⁷ Hutchinson, Carriers (2d Ed.), Sec. 200; Ray, Negligence of Imposed Duties (Freight Carriers), p. 175 ff.

¹ *Augusta Bank v. Earle*, 13 Pet. 519 (U. S. 1839); *Pembina Milling Co. v. Penna.*, 125 U. S. 181 (1889).